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July 15, 2003

PROCUREMENT DIRECTIVE NO. 2002-05, AMENDMENT 1

TO: All Chief Procurement Officers  
All Executive Departments

FROM: Aaron S. Fujioka, Administrator

SUBJECT: Amended Chapter 3-126, Hawaii Administrative Rules, Interim

This amendment issues Interim Sections 3-126-4 and 5, HAR, effective July 3, 2003.

These sections and Chapter 3-126, HAR, will be in effect until May 25, 2004, unless rescinded sooner. Prior to that date we will proceed to comply with the requirement of Administrative Directive No. 99-02, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative rules dated August 2, 1999.

Standard and Ramseyer version of the Interim sections to Chapter 3-126, HAR, Interim, are attached and copies of the standard version may also be downloaded from the SPO website at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Agencies should pen and ink the changes in the interim chapter above the amended section or repealed section and file the interim sections with the summary page in front of the chapter.

Should there be any questions, please contact me at (808) 587-4700 or your staff may contact Ruth Yamaguchi at (808) 586-0567.

attachment

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to Chapter 3-126 (Interim)  
Hawaii Administrative Rules

June 16, 2003

SUMMARY

1. §§3-126-4 and 3-126-5 are amended.

§3-126-4 Protest of an award. (a) A protest of an award shall be submitted in writing to the chief procurement officer or as otherwise specified in the solicitation, within five working days after the posting of the notice of award for solicitations pursuant to section 103D-302 or 103D-303, HRS; provided a protest following a debriefing pursuant to section 103D-303(h), HRS, shall be submitted in writing within five working days after the debriefing is completed. The provisions of section 3-126-3(c) and (d) to file a protest shall be complied with. Heads of purchasing agencies shall not proceed with the award upon receipt of a timely protest, and shall comply with section 3-126-5.

(b) Protest of an award pursuant to section 103D-304, 103D-305, or 103D-306 shall be submitted in writing by the protestor to the procurement officer, within five working days of knowledge giving rise to the protest; provided a protest following a debriefing pursuant to section 103D-304(k), HRS, shall be submitted in writing within five working days after the debriefing is completed.

- (1) A protest shall be filed in accordance with section 3-126-3(c) and (d), with supporting exhibits, evidence, or documents to substantiate the protest;
- (2) A decision shall be made by the procurement officer as expeditiously as possible after reviewing all relevant information, and shall be final. A decision issued in resolution of a protest shall contain the following:
  - (A) A statement of the action to be taken or resolution to the protest; and
  - (B) A statement that the decision is final and conclusive. [Eff 12/15/95; am and comp 11/25/02; am 7/3/03 ]  
(Auth: HRS §§103D-202, 103D-701) (Imp: HRS §103D-701)

§3-126-5 Stay of procurements during protest.

When a protest has been filed pursuant to section 3-126-3 or 3-126-4, no further action shall be taken until the protest has been settled, unless the chief procurement officer makes a written determination, after consulting with the head of the purchasing agency, that the award of the contract is necessary to protect the substantial interests of the State. [Eff 12/15/95; am and comp 11/25/02; am 7/3/03 ]  
(Auth: HRS §§103D-202, 103D-701) (Imp: HRS §103D-701)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to chapter 3-126, Hawaii Administrative Rules, on the Summary Page dated June 16, 2003 were adopted as interim rules at the Procurement Policy Board meeting on June 16, 2003. Pursuant to section 103D-202, HRS, these sections shall be issued by Procurement Directive and be effective until May 25, 2004.

These interim rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/  
PHYLLIS M. KOIKE  
Chairperson  
Procurement Policy Board

/s/  
RUSS K. SAITO  
State Comptroller

APPROVED AS TO FORM:

/s/  
Deputy Attorney General

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to Chapter 3-126 (Interim)  
Hawaii Administrative Rules

June 16, 2003

1. Section 3-126-4, Hawaii Administrative Rules, is amended to read as follows:

"§3-126-4 Protest of an award. (a) A protest of [a] an award shall be submitted in writing to the chief procurement officer or as otherwise specified in the solicitation, within five working days after the posting of the notice of award for solicitations pursuant to section 103D-302 or 103D-303, HRS; provided a protest following a debriefing pursuant to section 103D-303(h), HRS, shall be submitted in writing within five working days after the debriefing is completed. The provisions of [~~subsections~~] section 3-126-3(c) and (d) to file a protest shall be complied with. Heads of purchasing agencies shall not proceed with the award upon receipt of a timely protest, and shall comply with section 3-126-5.

(b) Protest of an award pursuant to [~~sections~~] section 103D-304, 103D-305, or 103D-306 shall be submitted in writing by the protestor to the procurement officer, within five working days of knowledge giving rise to the protest; provided a protest following a debriefing pursuant to section 103D-304(k), HRS, shall be submitted in writing within five working days after the debriefing is completed.

- (1) A protest shall be filed in accordance with [~~subsections~~] section 3-126-3(c) and (d), with supporting exhibits, evidence, or documents to substantiate the protest;
- (2) A decision shall be made by the procurement officer as expeditiously as possible after reviewing all relevant information, and shall be final. A decision issued in resolution of a protest shall contain the following:
  - (A) A statement of the action to be taken or resolution to the protest; and
  - (B) [~~Statement~~] A statement that the decision is final and conclusive." [Eff 12/15/95; am and comp 11/25/02; am 7/3/03 ] (Auth: HRS §§103D-202, 103D-701) (Imp: HRS §103D-701)

2. Section 3-126-5, Hawaii Administrative Rules, is amended to read as follows:

"§3-126-5 Stay of procurements during protest.  
When a protest has been filed pursuant to section 3-  
126-3 or 3-126-4, [~~the chief procurement officer or~~  
~~designee shall take~~] no further action shall be taken  
until the protest has been settled, unless the chief  
procurement officer [~~or designee~~] makes a written  
determination, after consulting with the head of the  
purchasing agency, that the award of the contract is  
necessary to protect the substantial interests of the  
State." [Eff 12/15/95; am and comp 11/25/02; am  
7/3/03 ] (Auth: HRS §§103D-202, 103D-701) (Imp:  
HRS §103D-701)

3. Material, except source notes, to be repealed  
is bracketed and stricken. New material is underscored.

4. Additions to update source notes to reflect  
these amendments are not underscored.

5. These amendments to chapter 3-126, Hawaii  
Administrative Rules, shall take effect ten days after  
filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the  
rules, drafted in the Ramseyer format pursuant to the  
requirements of section 91-4.1, Hawaii Revised  
Statutes, which were adopted as interim rules on June  
16, 2003, and filed with the Office of the Lieutenant  
Governor.

/s/  
PHYLLIS M. KOIKE  
Chairperson  
Procurement Policy Board

/s/  
RUSS K. SAITO  
State Comptroller

APPROVED AS TO FORM:

/s/  
Deputy Attorney General